

SPECIAL CIVIL APPLICATION No 5547 of 1988

Hon'ble MR.JUSTICE A.N.DIVECHA

2. To be referred to the Reporter or not? Yes

of the judgement? No

5. Whether it is to be circulated to the Civil Judge? No

Versus

STATE OF GUJARAT,

Shri M.C. KAPADIA, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, for the Respondent.

Date of decision: 27/02/96

Law is designed to help people and not to harass them. It appears that the author of the order under challenge in this petition thinks to the contrary. That thinking of his

appears to be reflected in the order under challenge in this petition. It may be clarified that the order under challenge in this petition was passed by the respondent on 30th April 1988 rejecting the petitioner's application for exemption under section 20 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to one parcel of land bearing survey No.35 (Part) admeasuring 17645 square metres situated at Karanj within the urban agglomeration of Surat.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is in occupation and possession of one parcel of land bearing survey No.35 in all admeasuring 37939 square metres. It is her case that she applied for its exemption under section 20 (1) of the Act on the ground that agricultural operations were carried on therein. By the order passed on 29th February 1980 under section 20 (1) of the Act, exemption with respect to half the area of the land to the tune of 17645 square metres came to be granted on certain terms and conditions. Its copy is at Annexure-A to this petition. The petitioner thereafter applied on 20th November 1987 for grant of exemption under section 20 (1) of the Act with respect to the other half thereof. Its copy is at Annexure-C to this petition. It appears that pursuant thereto she was called upon to remain present at 1.00 p.m. on 31st December 1987 with respect to certain particulars. A copy of the intimation in that regard given to her on 18th December 1987 is at Annexure-D to this petition. It appears that in response thereto the petitioner produced several documents on 31st December 1987. A copy of its list is at Annexure-E to this petition. Thereafter, by the order passed by and on behalf of the respondent on 30th April 1988, the application for exemption came to be rejected. Its copy is at Annexure-F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. The first ground given for rejection of the application for exemption as transpiring from the impugned order at Annexure-F to this petition is to the effect that the land was situated in a zone other than the agricultural zone. This ground is as vague as vague could be. The author of the impugned order at Annexure-F to this petition has not specified what plan he has referred to for the purpose of coming to that conclusion. He has not cared to ascertain whether or not the said plan answered its definition contained in section 2 (h) of the Act. It transpires from the list of documents at Annexure-E to this petition that a copy of the earlier exemption order at Annexure-A to this petition was produced in support of the application for exemption. If the

land referred to in the impugned order at Annexure-F to this petition was found to be in a zone other than the agricultural zone, the other half thereof was also in the same zone other than the agricultural zone. In that view of the matter, the author of the impugned order at Annexure-A to this petition has not chosen to explain why the half of the land represented by the order at Annexure-A to this petition could enjoy exemption but the other half should be denied such exemption. It is thus clear that the first ground appearing in the impugned order at Annexure-F to this petition for rejecting the application for exemption is absolutely vague and suffers from the vice of non-application of mind on the part of its author.

4. The second ground listed in the impugned order at Annexure-F to this petition for rejecting the application for exemption is that no question of public interest or hardship is involved in the claim for exemption on the ground of agricultural operations. It cannot be gainsaid that our country is agricultural in nature. A large population eke out its living through agricultural work. Even the Government encourages use of lands for agricultural purposes. This is evident from the fact that for conversion from agricultural to non-agricultural use a person has to pay a sort of premium and the N.A. assessment is higher than assessment for agricultural use of land under the relevant provisions contained in the Bombay Land Revenue Code, 1879. It therefore passes comprehension as to on what basis the author of the impugned order at Annexure-F to this petition has come to the conclusion that no question of public interest is involved in the claim for exemption on the ground of the agricultural use of the land in question. So far as the question of hardship is concerned, the petitioner's application at Annexure-C to this petition is quite eloquent. It appears that the author of the impugned order at Annexure-F to this petition has not cared to read it. He does not seem to have applied his mind to its contents. In that view of the matter, there is no escape from the conclusion that the second ground contained in the impugned order at Annexure-F to this petition for rejection of the application for exemption displays gross non-application of mind on the part of its author.

5. The third ground for rejection of the application for exemption appearing in the impugned order at Annexure-F to this petition is to the effect that no continuous agricultural operations are carried on in the land in question from the date of coming into force of the Act. It is anybody's guess as to on what material the author of the impugned order at Annexure-F to this petition has relied on for reaching that conclusion. Not a whisper is made in that regard therein. In the list of documents at Annexure-E to this petition at serial

No.7 the petitioner has produced what is popularly known as Panipatraks from 1975-76 onwards and at serial No.8 she has produced a certificate given by the Talati-cum-Mantri of the concerned village regarding the yield from the land in question. These documents would prima facie go to show that the land in question was used for agricultural operations. These documents have not been referred to at all by the author of the impugned order at Annexure-F to this petition. I am therefore of the opinion that the third ground contained in the impugned order at Annexure-F to this petition for rejection of the application for exemption also suffers from the vice of non-application of mind on the part of its author.

6. The fourth and last ground given in the impugned order at Annexure-F to this petition for rejection of the application for exemption is that the petitioner would be in a position to make the maximum use of the retainable land under the Act. That is hardly a ground for rejecting an application for exemption. The author of the impugned order at Annexure-F to this petition ought to have seen that there is no prohibition against grant of exemption under section 20 (1) of the Act on the ground that the landholder can make the maximum use of the retainable land under the Act.

7. In view of my aforesaid discussion, I am of the opinion that no ground given in the impugned order at Annexure-F to this petition in support of rejection of the application for exemption is sustainable in law. It reflects the attitude of its author to the effect that law is designed to harass people and not to help them. Such approach and attitude on the part of its author cannot be countenanced.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-F to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to the State Government through the respondent for restoration of the proceeding to file and for deciding afresh the fate of the application for exemption in the light of this judgment of mine preferably by 30th April 1996.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 30th April 1988 at Annexure-F to this petition is quashed and set aside. The matter is remanded to the State Government through the respondent for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine preferably by 30th April 1996. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

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